importation of the cannabis into the United Kingdom as a staging post for onward transmission to another country, and that it was unnecessary to show that he had done anything in the United Kingdom to further the transaction. Accordingly, the appellant was held to have been properly convicted when he arranged for cannabis to be transferred from an aircraft which had landed at Heathrow Airport to another waiting aircraft bound for Bermuda.

In our view, the reasoning in *R* v *Geesman*[1] is applicable to ascertaining the meaning of the word 'import' in s 7 of the Act. Singapore has also ratified the Single Convention on Narcotic Drugs. The Misuse of Drugs Act is not a law which is concerned with customs duty but a law enacted by Parliament as part of Singapore's efforts to suppress the illegal importation into and exportation from Singapore of controlled drugs as defined in the Misuse of Drugs Act.

Furthermore, the DPP has drawn our attention to s 2 of the Interpretation Act (Cap 1, 1985 Ed) which defines the word 'import', with its grammatical variations and cognate expressions, to mean, 'to bring or cause to be brought into Singapore by land, sea and air'. The definition is clear and unambiguous. We do not see any reason for not applying the statutory definition to the said word in the Misuse of Drugs Act.

Accordingly, we reject the submission of your counsel that you did not import diamorphine into Singapore on 12 December 1986 when you brought in 16 packets of substance containing the said drug.

For the reasons we have given, we find that on the facts and on the law the prosecution has proved its case against both of you without any reasonable doubt. We find both of you guilty as charged and we convict you accordingly.

Accused convicted.

Solicitors: *Shan Rajagopal*; *Tan Kay Bin & Co.*

Reported by *Terence Tan Bian Chye*

Koshida Trading (S) Pte Ltd v Limco Products Manufacturing Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 971 OF 1988
CHAN SEK KEONG J
1 MARCH 1990

Contract — Offer and acceptance — Whether delivery of purchase order equal to offer — Whether offer accepted by acknowledgment of receipt of purchase order — Alleged failure of plaintiff to supply ramchips — Claim for damages based on substitute purchases — Purchase from connected party — Whether damages mitigated

Civil Procedure — Summary judgment — Counterclaim and set-off — Whether defendant should be given unconditional leave to defend

The plaintiffs are suppliers of RAM microchips ('ramchips'). The defendants are manufacturers of personal computers and have been buying ramchips from the plaintiffs. By the present action, the plaintiffs claimed a sum of money that the defendant acknowledged they owed. However, the defendants submitted that they were entitled to unconditional leave to defend as they had a set-off and counterclaim exceeding $16m arising from the plaintiffs' alleged failure to supply ramchips under five purchase orders. The action for summary judgment was heard before an assistant registrar who gave the plaintiff leave to enter final judgment. From this, the defendants appealed.

The appeal centred on two issues: (a) whether because of the counterclaim, the defendants should have been given unconditional leave to defend the whole of the claim, and (b) whether because of the set-off, the defendants should have been given unconditional leave to defend part of the claim to the extent of the set-off. The defendants contended that in law, the moment the plaintiffs acknowledged receipts of the purchase order by returning the attached duplicate endorsed to the defendants a binding contract was concluded. The plaintiffs' version of how the business was conducted was that whenever the defendants wished to obtain supplies of ramchips, they would send to the plaintiffs their purchase orders setting out the desired quantities, that the plaintiffs would acknowledge receipts thereof by returning a copy thereof to the defendants, that this was followed by negotiations on the terms of the orders. Even then there is no binding contract until the plaintiffs delivered the ramchips order, when invoices and delivery orders would be delivered to the defendants.

Held, dismissing the defendants' appeal:

(1) In the court's view, looking at the terms of the purchase order and the way in which three of the purchase orders were endorsed and returned to the defendants, the court formed the view that the plaintiffs' version was probably nearer to the truth than that of the defendants.

(2) In the court's view, as a matter of construction, the form of the purchase order was clearly an offer by the defendants to purchase the goods described therein on terms set by the defendants.

(3) There was no invitation to the plaintiffs to accept the order but merely to acknowledge it in the manner described. The form did not say or purport to say that the acknowledgment would constitute a binding contract. There was nothing in the form which suggested to a reasonable supplier that acknowledging the order would bind him to supply the goods on the terms stated therein.

(4) If that was the intention of the defendants, the form was wholly misleading. The purchase order was in law a unilateral offer to pay the price stated therein for goods delivered in accordance with its terms. Such an offer may, in law, be accepted by the supplier by performance or by return of promise.

(5) The defendants' claim was for damages for short delivery of ramchips. The damages were calculated based on the price the defendants claimed to have paid for ramchips in the open market. The bona fides of these purchases was doubtful as the ramchips were allegedly purchased from companies controlled by or in which the managing director of the defendants had an equity investment. These alleged purchases and in such small quantities did not suggest that the defendants were taking serious steps to mitigate their loss timeously.

(6) The counterclaims based on two purchase orders had no relation to the plaintiffs' claim. They were separate transactions from those in respect of which the defendants admitted liability. These counterclaims would not entitle the defendants to a stay of execution, much less unconditional leave to defend.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 10-9-89.]

Cases referred to

1 *Hanak* v *Green* [1958] 2 QB 9 (refd)
2 *Drake & Fletcher* v *Batchelor* (1986) 83 LS Gaz 1232 (folld)
3 *AB Contractors Ltd* v *Flaherty Bros* (1978) 16 BLR 10 (folld)

Lee Mun Hooi for the plaintiffs.
Harish Kumar for the defendants.

Cur Adv Vult

Chan Sek Keong J: The plaintiffs are suppliers of, inter alia, Mitsubishi RAM microchips ('ramchips') of various specifications. The defendants are manufacturers of personal computers and have been buying ramchips from the plaintiffs from 1986. On 19 January 1987, the defendants signed an acknowledgment that they owed the plaintiffs the sum of $2, 584,583.31 which they agreed to pay in six monthly instalments of various amounts. The defendants paid the first three instalments and another sum, leaving a balance of $1,289,188.31.

In this action, the plaintiffs claimed against the defendants the payment of this said balance and interest thereon amounting to $66,208.68. At the hearing before the assistant registrar for summary judgment, the defendants admitted the claim for principal but denied the claim for interest. However, the defendants submitted that they were entitled to unconditional leave to defend as they had a set-off and counterclaim exceeding $16m arising from the plaintiffs' alleged failure to supply ramchips under five purchase orders, viz nos 3043 dated 14 September 1987 ('JL2'), 3146 dated 15 October 1987 ('JL3'), 3147 dated 15 October 1987 ('JL4'), 2786 dated 26 June 1987 ('JL31') and 2700 dated 27 May 1987 ('JL32'). The assistant registrar gave leave to the plaintiffs to enter final judgment for the principal amount on the ground that the set-off and counterclaim was not related to and did not arise from the claim, but gave the defendants unconditional leave to defend the claim for interest.

Both parties appealed. The plaintiffs proceeded to execute on the judgment. The defendants filed an application for a stay of execution pending the hearing of the appeal but paid the judgment debt on 22 August 1988 before their appeal was heard. The stay application was dismissed on 29 August 1988. The defendants also appealed against the refusal to grant the stay. This appeal was withdrawn when it and the appeal against summary judgment came on for hearing before me on 17 May 1989.

The appeal of the defendants centred on two issues: (a) whether because of the counterclaim, the defendants should have been given unconditional leave to defend the whole of the claim, and (b) whether because of the set-off, the defendants should have been given unconditional leave to defend part of the claim to the extent of the set-off. The defendants confined their arguments on their claim to a set-off and counterclaim to three purchase orders only, viz JL2, JL3 and JL4.

I dismissed the appeal of the defendants and also that of the plaintiffs on the claim for interest. The defendants have now appealed against my decision.

The parties gave different versions as to how the business between them was conducted. According to the defendants, the parties would first negotiate on the amount of ramchips to be supplied, the price therefor and the delivery schedule, and on conclusion of which the defendants would send a purchase order to the plaintiffs containing the agreed terms. The plaintiffs would then return the duplicate copy of the order endorsed with the seal of the officer in charge of that order and a binding contract would then be concluded.

The defendants produced a copy of the standard printed form of the purchase order used by them. The form is addressed to the supplier and requests him to supply the goods described therein according to instructions, terms and conditions shown thereon and overleaf. Three columns of space with the headings 'Item No', 'Quantity' and 'Description' are provided for filling up before the purchase order is sent out. The front page also contains three spaces next to the headings 'Authorized Signature', 'Latest Delivery Date' and 'Payment Terms' to be filled up by the defendants.

The terms shown overleaf contain, inter alia, the following:

> Acknowledgment
> This purchase order must be acknowledged by the seller within 14 days from date hereof by returning the attached duplicate duly endorsed to the buyer.
>
> Price
> No change to the price(s) specified in the purchase order shall be made without the prior agreement in writing by the buyer.

Delivery
Delivery of goods shall be made within the time specified to the buyer's address or as otherwise instructed. If the seller fails to make delivery/deliveries within the time specified, the buyer reserves the right to buy from other sources and charge seller for any additional costs incurred thereon.

Each delivery shall be construed as a separate order and failure to make or take any delivery shall not consider (sic) the order as a whole.

Cancellation/Suspension
The buyer reserves the right to cancel or suspend this purchase order or part thereof before the delivery/deliveries are effected or, if the goods are not delivered according to delivery times as specified herein, or if the buyer is unable to accept delivery for any cause beyond the buyer's control.

Counsel for the defendants contended that in law the moment the plaintiffs acknowledged receipt of the purchase order by returning the attached duplicate endorsed to the defendants (in the present case, JL2, JL3 and JL4 bearing the chop imprints of the plaintiffs) a binding contract was concluded.

The plaintiffs' version of how the business was conducted was that whenever the defendants wished to obtain supplies of ramchips, they would send to the plaintiffs their purchase orders setting out the desired quantities, the prices and delivery dates, that the plaintiffs would acknowledge receipt thereof by returning a copy thereof to the defendants, that this was followed by negotiations on the terms of the orders. Even then there is no binding contract until the plaintiffs delivered the ramchips order, when invoices and delivery orders would be delivered to the defendants.

In my view, looking at the terms of the purchase order and the way in which JL2, JL3 and JL4 were endorsed and returned to the defendants, and also taking into account purchase orders JL5A-F dated 3 July 1987, 9 July 1987, 5 September 1987, 23 September 1987, 12 November 1987 and 14 January 1988 (all of which the plaintiffs had endorsed but did not supply and on which the defendants had made no claim), I formed the view that the plaintiffs' version was probably nearer to the truth than that of the defendants. As a matter of fact, the defendants' version was contradicted by JL2 itself in which delivery dates (which were an essential term of the purchase) were not given. The mere acknowledgment of JL2 by the plaintiffs on 18 August 1987 could not have resulted in a concluded contract in the absence of this essential term. Counsel for the defendants admitted that the delivery schedule was given by the defendants a few days later on another copy of the purchase order (see JL46). Additional evidence to contradict the defendants' version could be found in the purchase order dated 20 November 1987 (JL37) on which had been written which suggested that the acknowledgment of the order was what it purported to be, ie an acknowledgment, and not an acceptance.

In my view, as a matter of construction, the form of the purchase order was clearly an offer by the defendants to purchase the goods described therein on terms set by the defendants. There was no invitation to the plaintiffs to accept the order but merely to acknowledge it in the manner described. The form did not say or purport to say that the acknowledgment would constitute a binding contract. There was nothing in the form which suggested to a reasonable supplier that acknowledging the order would bind him to supply the goods on the terms stated therein. If that was the intention of the defendants, the form was wholly misleading. The purchase order was in law a unilateral offer to pay the price stated therein for goods delivered in accordance with its terms. Such an offer may, in law, be accepted by the supplier by performance or by return of promise: see 9 *Halsbury's Laws of England* (4th Ed) para 252 n 7, and para 253. The nature of the purchase order was, in my view, consistent with the printed terms regarding delivery (that each delivery was a separate order) and cancellation (that until delivery, ie acceptance by performance, or in return of promise, the defendants were free to revoke or suspend the offer). In any case, I was satisfied from the documentary evidence that the order was meant and the parties understood it to be the starting point of negotiations on the terms of the offer.

I turn now to the specific purchase orders that the plaintiffs were alleged to have breached. JL2 which was acknowledged on 18 September 1987 was for the supply of 200,000 pieces P-12 ramchips on delivery dates to be advised later. On 21 September 1987, the plaintiffs received advice of delivery from the defendants (see JL46) of 50,000 pieces per month from October 1987 to January 1988. The plaintiffs supplied 50,000 pieces in October 1987 on 60 days' credit and 10,000 pieces COD in December 1987. The defendants contended that the plaintiffs, in making these deliveries, must have accepted the terms of JL2 and in failing to make full delivery were in breach of contract which entitled the defendants to claim damages and to set off the same against the plaintiffs' claim. He referred to *Hanak* v *Green*.[1] As stated in their counterclaim, the defendants' claim under JL2 was for damages for short delivery of 115,000 P-12 ramchips. The defendants claimed to have purchased between February 1988 to July 1988 36,000 P-12 ramchips in the open market at an average price of US$6.70 per piece. However, the bona fides of these purchases was doubtful as the ramchips were allegedly purchased from companies controlled by or in which the managing director of the defendants had an equity investment. These alleged purchases and in such small quantities did not suggest that the defendants were taking serious steps to mitigate their loss timeously.

In my view, the plaintiffs' deliveries were consistent with the nature of the purchase order and the way the parties conducted their business. The requirement that

payment for the second delivery be COD, which the defendants accepted without protest, was inconsistent with there being a concluded contract on the terms set out in JL2 or JL46. Also, if there had been a concluded contract in respect of JL2, the plaintiffs were already in breach in respect of the November delivery. Yet, the defendants have produced no documentary evidence or alleged that they had demanded delivery in and for the months following. Then on 29 March 1988, the defendants unilaterally agreed to amend the payment terms under JL2 to cash or letter of credit and requested that delivery be expedited. Since this was a unilateral and unconditional offer of better terms for delivery, it was not, in my view, consistent with there being an existing contract.

JL3 and JL4, both dated 15 October 1987, were acknowledged by the plaintiffs on 16 October 1987. On 23 October 1987, the plaintiffs wrote to the defendants to thank them for the orders and also to state as follows:

> Per our telephone today, we advised that we had discussed with Mitsubishi and regret to inform you that P/O Nos 3146 and 3147 cannot be accepted due to the following reasons:...
>
> Based on the above factors, we are unable to accept P/O Nos 3146 and 3147. However, we are trying to assist without commitment to the exact quantity of D-Ram and prices of D-Ram and advised M/s Limco seek several alternative sources [named] rather than to depend on Koshida as only one source.
>
> Please be advised that although acknowledgment of purchase order Nos 3146 and 3147 may or may not be endorsed, we still reserve the rights to service this notice to supersede all correspondence written or verbal that P/O Nos 3146 and 3147 are not accepted due to reasons already explained in writing or communicated in earlier meetings and as such, please take notice that Koshida Trading (S) Pte Ltd is under no obligation and without commitment to comply with the delivery of D-Ram as stated in P/O Nos 3146 and 3147.
>
> However, Koshida Trading (S) Pte Ltd will try its utmost best help to find some quantity whenever opportunities exist on the supply situation.

The defendants in these proceedings have disputed that they were sent or that they received this letter. They have maintained that they first had sight of this letter on 5 April 1988 when the plaintiffs produced it to them. The plaintiffs' version of this event was that they produced a copy of it to the defendants because the defendants denied receiving it. In view of my construction as to the legal effect of the form of the purchase order, whether or not the defendants received the said letter was irrelevant. Apart from the acknowledgments, there was no other evidence that there was a concluded contract in terms of JL3 and JL4. However, I thought the probability was that the defendants did receive the said letter as (i) they did not complain about the non-delivery of the ramchips ordered (which were scheduled to begin in November 1987) until 24 March 1988 and (ii) they unilaterally and unconditionally agreed to pay for delivery in cash or by letter of credit on 29 March 1988, and requested delivery be expedited. As I have already stated, this offer was inconsistent with there being an existing contract.

In so far as JL3 and JL4 are concerned, if I am wrong in my conclusions on the law and on the facts, the counterclaims based on these two orders had no relation to the plaintiffs' claim. They were separate transactions from those in respect of which the defendants admitted liability. These counterclaims would not entitle the defendants to a stay of execution, much less unconditional leave to defend: see *Drake & Fletcher* v *Batchelor*[2] and *AB Contractors Ltd* v *Flaherty Bros.*[3]

I think it is necessary to refer to one more fact which cast doubt on the defendants' set-off and counterclaim. After the defendants defaulted in paying the fourth instalment of their outstanding debt, the parties met several times to discuss the settlement of the balance of the debt and also the continuation of their business relationship. At about this time, the defendants alleged that the plaintiffs were in breach of contract in failing to supply the quantity of ramchips ordered under JL2, JL3 and JL4 and threatened to sue the plaintiffs. The plaintiffs denied any breach. The parties could not agree on this dispute as well as the rescheduling of the balance debt, as a result of which the plaintiffs commenced this action on 14 May 1988. Then on 17 June 1988, the defendants wrote to the plaintiffs and confirmed that they would take no action against the plaintiffs under JL2, JL3 and JL4 and apologized for the misunderstanding between the two companies. A few days later, the defendants had a change of mind as on 20 June 1988 they wrote to the plaintiffs stating that their decision not to take action against the plaintiffs was conditional upon the plaintiffs agreeing to an out of court settlement as proposed by the defendants and that the plaintiffs had agreed not to disclose the defendants' letter of 17 June 1988 by way of defence in these proceedings. On 28 June 1988, the plaintiffs replied that there was no such agreement as alleged by the defendants but that if they were sincere in reaching an amicable settlement, the plaintiffs were prepared to accept a settlement on the terms set out therein. No settlement was reached.

Counsel for the plaintiffs relied on the defendants' letter of 17 June 1988 as a waiver. Counsel for the defendants contended otherwise. I do not think that the said letter had the effect of estopping the defendants from claiming against the plaintiffs. However, the defendants have given a satisfactory explanation as to why they had decided to withdraw what was, if true, a very substantial set-off and counterclaim (originally in excess of $16m and now reduced to US$3,858,115).

For the above reasons, I dismissed the defendants' appeal with costs and left them to pursue their counterclaim.

Appeal dismissed.

Solicitors: *Lee Bon Leong & Co; Chor Pee & Co.*

Reported by *Terence Tan Bian Chye*

Lee Hooi Lian v Kuay Guan Kai

HIGH COURT (SINGAPORE) — MC SUIT NO 1395 OF 1988
CHAO HICK TIN JC
28 FEBRUARY 1990

Contract — Option — Option sum paid in consideration — Failure to exercise option — Whether option sum recoverable

Land Law — Option — Unsatisfactory replies to legal requisitions — Buyer rescinding contract — Whether buyer entitled to do so — Whether option sum recoverable

On 8 July 1987, in consideration of a sum of $5,000 ('the option sum'), the defendant granted an option to the plaintiff to purchase the property ('the property') on the terms set out therein. The option was to be exercised by the plaintiff by signing on the option and delivery of the same together with a cheque (representing 10% of the purchase price less the option sum). Clause 7 of the option reads: 'The sale and purchase herein shall be subject to the purchaser's solicitors receiving satisfactory replies to their legal requisitions and if any such replies and/or interpretation plans are found to be unsatisfactory or if the property is affected or may be affected to any extent whatsoever by the Mass Rapid Transit System, any road line, then this agreement may be rescinded at the purchaser's option.'

The plaintiff wrote to the defendant informing the latter, after referring to cl 7, that they had 'ascertained that the said property is affected by road line and that in the circumstances (their) client is not in a position to exercise the said option'. The solicitors of the plaintiff also asked for the refund of the $5,000 as soon as possible. The defendant replied to say that as the plaintiff did not exercise the option, the option sum of $5,000 was forfeited. The plaintiff accordingly started the present action to recover the option sum. The defendant argued that until the option has been exercised, and the contract to purchase has come into being, the plaintiff is not entitled to rely on any of the clauses set out in the option, which will only form the terms of the contract when the option is exercised.

Held, allowing the plaintiff's claim:

(1) The court accepted as persuasive the American authorities which decided that failure to exercise an option is no ground to refuse damages or to refuse the refund of the option money to the purchaser if the vendor is clearly unable to convey what he has contracted to sell.

(2) In this case, there is no doubt that the defendant cannot convey the property which he has undertaken to sell. There is no reason why the plaintiff could not accept the repudiation and recover the return of the option sum. The court was not prepared to take a strictly technical approach and ignore the essential nature of such an option contract.

Cases referred to

1 *European Asian Bank* v *Punjab and Sind Bank* [1983] 2 All ER 508 (follid)
2 *Universal Cargo Carriers Corp* v *Citati* [1957] 2 QB 401 (follid)
3 *United Dominions* v *Eagle Aircraft Services* [1968] 1 All ER 104 (refd)
4 *Fullington* v *Penn Phillips Co* (1964) 395 Pac Rep (2 Ed) 124 (follid)
5 *McFerran* v *Heroux* 44 Wash 2d 631 (follid)
6 *Tatum* v *Levi* 117 CA83, 3 P 2d 963 (follid)
7 *Burks* v *Davies* 85 Cal 110; 24 P 613 (follid)
8 *Unatin 7-Up Co* v *Anna Solomon* 157 ALR 1304 (follid)
9 *Renol Holding* v *Lankenau* 116 NYS 2d 861 (follid)
10 *West Country Cleaners (Falmouth) Ltd* v *Saly* [1966] 3 All ER 210 (distd)
11 *Sievwright* v *Cromwell Proprietary Gold-Mining Co* (1901) 20 NZLR 487 (distd)

Roderick Martin for the plaintiff.
Lee Mun Hooi for the defendant.

Cur Adv Vult

Chao Hick Tin JC: On 8 July 1987, in consideration of a sum of $5,000 ('option sum'), the defendant granted an option to the plaintiff to purchase the property at No 36, Jalan Jintan, Singapore 0922 ('the property') for a sum of $425,000 and on the terms set out therein. The option was to be exercised by the plaintiff by signing on the option and delivering the same together with a cheque for $37,500 (representing 10% of the purchase price less the option sum) to the vendor's solicitors by 4pm on 21 July 1987.

Among the terms set out in the option is cl 7 which reads as follows:

> The sale and purchase herein shall be subject to the purchaser's solicitors receiving satisfactory replies to their legal requisitions and applications for interpretation plans to the various government departments and Mass Rapid Transit Corporation (MRTC) insofar as such replies/interpretation plans relate to the property and if any such replies and/or interpretation plans are found to be unsatisfactory or *if the property is affected* or may be affected *to any extent whatsoever by* the Mass Rapid Transit System, *any road line*, any drainage line, or any road or drainage proposal or government acquisition or scheme or intended government acquisition or scheme then this agreement may be rescinded at the purchaser's option and in such event the vendor shall forthwith refund to the purchaser all moneys paid by the purchaser to the vendor or the vendor's solicitors but without any interest compensation or deductions whatsoever and thereupon neither party shall then have any claim or demand against the other for costs damages or compensation or otherwise ... (Emphasis added.)

On 21 July 1987, at 2.30pm and well before the hour at which the option was due to expire, the solicitors for the plaintiff wrote to the solicitors for the defendant informing the latter, after referring to cl 7, that they have 'ascertained that the said property is affected by road line and